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IN-INTEREST TO WASHINGTON MUTUAL BANK, F/K/A WASHINGTON
7 MUTUAL BANK, FA
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11 UNITED STATES BANKRUPTCY COURT
12 NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION

13 In re

14 ANNA MARIA BORQUEZ,

15 Debtor(s).
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Case No. 10-46902

Chapter 13

OBJECTION TO CONFIRMATION OF
CHAPTER 13 PLAN

341(a) MEETING:

DATE: August 26, 2010

TIME: 2:00pm

PLACE: Oakland U.S. Trustee Office
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JPMorgan Chase Bank, National Association, as Successor-in-Interest to Washington Mutual Bank, f/k/a Washington Mutual Bank, FA¹ (hereinafter "Creditor"), secured creditor of the above-entitled Debtor, Anna Maria Borquez (hereinafter "Debtor"), hereby objects to the Chapter 13 Plan filed by Debtor in the above-referenced matter. The basis of the objection is stated below:

I.

STATEMENT OF FACTS

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¹ This Objection to Confirmation of Chapter 13 Plan shall not constitute a waiver of the within party's right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

1 1. On or about May 16, 2007, Debtor, for valuable consideration, made, executed and
2 delivered to Washington Mutual Bank, FA (“Lender”) a Promissory Note in the principal sum of
3 \$416,000.00 (the "Note"). Pursuant to the Note, Debtor is obligated to make monthly principal and
4 interest payments. A copy of the Note is attached hereto as exhibit A and incorporated herein by
5 reference.

6 2. On or about May 16, 2007, Debtor made, executed and delivered to Lender a Deed of
7 Trust (the “Deed of Trust”) granting Lender a security interest in certain real property located
8 at 4132 Hamlet Drive, Concord, California 94521 (hereinafter the “Subject Property”), which is
9 more fully described in the Deed of Trust. The Deed of Trust was recorded on May 30, 2007, in the
10 official records of the Contra Costa County Recorder's office. A copy of the Deed of Trust is
11 attached hereto as exhibit B and incorporated herein by reference. Thereafter, Debtor defaulted with
12 payments under the Note and is contractually due for February 1, 2009.

13 3. On or about September 25, 2008, WAMU was closed by the Office of Thrift
14 Supervision and the FDIC was named receiver. As authorized by Section 11(d)(2)(G)(i)(II) of the
15 Federal Deposit Insurance Act, 12 U.S.C. Section 1821(d)(G)(i)(II), the FDIC, as receiver of
16 WAMU, may transfer any asset or liability of WAMU without any approval, assignment, or consent
17 with respect to such transfer. Pursuant to the terms and conditions of a Purchase and Assumption
18 Agreement between the FDIC as receiver of WAMU and Movant dated September 25, 2008,
19 Movant acquired certain of the assets, including all loans and all loan commitments of WAMU. As
20 a result, on September 25, 2008, Movant became the owner of the loans and loan commitments of
21 WAMU.

22 4. On or about June 17, 2010, Debtor filed a Chapter 13 bankruptcy petition. Debtor’s
23 Chapter 13 Plan (“Plan”) provides for payments to the Trustee in the sum of \$215.00 per month for
24 sixty (60) months. The Plan provides for direct monthly post-petition payments of \$1,294.10 to the
25 Creditor. However, the Plan fails to provide for the cure of pre-petition arrears to the Creditor.

26 5. The pre-petition arrearage on Creditor's secured claim is in the sum of \$42,800.87. A
27 copy of Creditor's Proof of Claim is attached hereto as exhibit C and incorporated herein by
28 reference.

1 Debtor's Schedule J indicates that the she has disposable income of \$216.90. The Debtor
2 proposes to make monthly Plan payments of \$215.00 to the Chapter 13 Trustee. The Debtor will be
3 required to apply an additional \$713.34 monthly to the Chapter 13 Plan in order to provide for the
4 cure of Creditor's pre-petition arrears. Accordingly, the Debtor lacks sufficient monthly disposable
5 income with which to fund this Plan.

6 WHEREFORE, Creditor respectfully requests:

- 7 1. That confirmation of the Debtor's Chapter 13 Plan be denied;
- 8 2. For reasonable attorneys' fees and costs; and
- 9 3. For such other and further relief as this Court deems just and proper.

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11 Respectfully submitted,

12 Dated: August 10, 2010

PITE DUNCAN LLP

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14 /s/ ELLEN CHA CA SBN 250243
15 Attorneys for JPMORGAN CHASE BANK,
16 NATIONAL ASSOCIATION, AS SUCCESSOR-IN-
17 INTEREST TO WASHINGTON MUTUAL BANK,
18 F/K/A WASHINGTON MUTUAL BANK, FA
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